

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : DECLARATION

- v - : 05 Cr. 00004 (WHP)

WILLIAM GENOVESE, :
Defendant. :
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I, **SEAN HECKER**, hereby declare under the penalties of perjury, pursuant to 28 U.S.C. § 1746, that:

1. I am an attorney associated with the Federal Defender Division of the Legal Aid Society, and have been appointed by this Court to represent the defendant, WILLIAM GENOVESE, in this action. I make this Declaration in support of a motion to dismiss the Indictment filed against Mr. Genovese.

2. The statements contained in this Declaration are based on my review of the Complaint, the Indictment, other documents provided by the government in discovery, and publicly-available news reports.

3. Prior to February 12, 2004, portions of the source code for two Microsoft products - Windows NT 4.0 and Windows 2000 - were misappropriated, and leaked onto the Internet, where they became available to anyone with an Internet connection. Microsoft confirmed the fact of the leak on February 12, 2004. That day, a Microsoft spokesman announced: "Today we became aware

that incomplete portions of Windows 2000 and NT 4.0 source code was illegally made available on the Internet." See Brian Krebs, "Microsoft Confirms Windows Code Leak," Wash. Post., Feb. 12, 2004, available at <http://www.washingtonpost.com/ac2/wp-dyn/A37648-2004Feb12?language=printer>. Indeed, according to one security consultant, as of February 12, 2004, the code "was on peer-to-peer networks and IRC (Internet relay chat) today. . . . Everybody has got it - it's widespread now." Robert Lemos, "Microsoft Probes Windows Code Leak," News.com, Feb. 12, 2004, available at http://news.com.com/2102-7349_3-5158496.html.

4. It is not known who stole the source code or how they obtained it prior to releasing it onto the Internet. Microsoft has confirmed, however, that the "leak" was traced to a computer used by the Director of Technology for Mainsoft, an Israeli software development company which had access to the Windows source code for many years as part of Microsoft's effort to export certain key Microsoft applications, including Internet Explorer, to Linux- (as opposed to Windows-) based operating systems. See Paul Thurrott, "Microsoft Updates Code Leak Statement, Mainsoft Fingered," Feb. 19, 2004, available at <http://www.windowsitpro.com/Articles/Print.cfm?ArticleID=41807>.

5. The Government alleges in the Complaint that on or about February 12, 2004, Mr. Genovese downloaded the leaked code from the Internet and posted a message on his website -- dubbed

"illmob.org" -- which included an offer to sell the code. See Complaint ¶ 5.

6. The Complaint further alleges that later in February of 2004, an investigator hired by Microsoft obtained the stolen portions of source code from Mr. Genovese after contacting him by e-email and paying him \$20. Complaint ¶¶ 6(a)-(d). Documents produced in discovery, including e-mail communications between the Microsoft investigator, posing as a visitor to Mr. Genovese's website, and Mr. Genovese, reflect that \$20 was the amount chosen by the investigator, not by Mr. Genovese. The money was transmitted via PayPal, an online payment service. A second Microsoft investigator later repeated the process of obtaining the code from Mr. Genovese's website. See Complaint ¶ 6(d).

7. Finally, according to the Complaint, the first Microsoft investigator who had procured the code from Mr. Genovese provided instructions to an FBI agent on how to repeat the process. The Complaint alleges that the FBI agent in fact obtained the same sections of code in July of 2004. See Complaint ¶¶ 7-8.

8. On November 9, 2004, Mr. Genovese was arrested on a Complaint, which charged him with the unlawful distribution of trade secrets, in violation of Title 18, United States Code, Section 1832(a)(2), a provision of the EEA which criminalizes the knowing downloading or distribution of "trade secrets." On January 3, 2005, a grand jury returned an Indictment charging Mr.

Genovese with the same offense.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
 March 16, 2005

SEAN HECKER, ESQ.